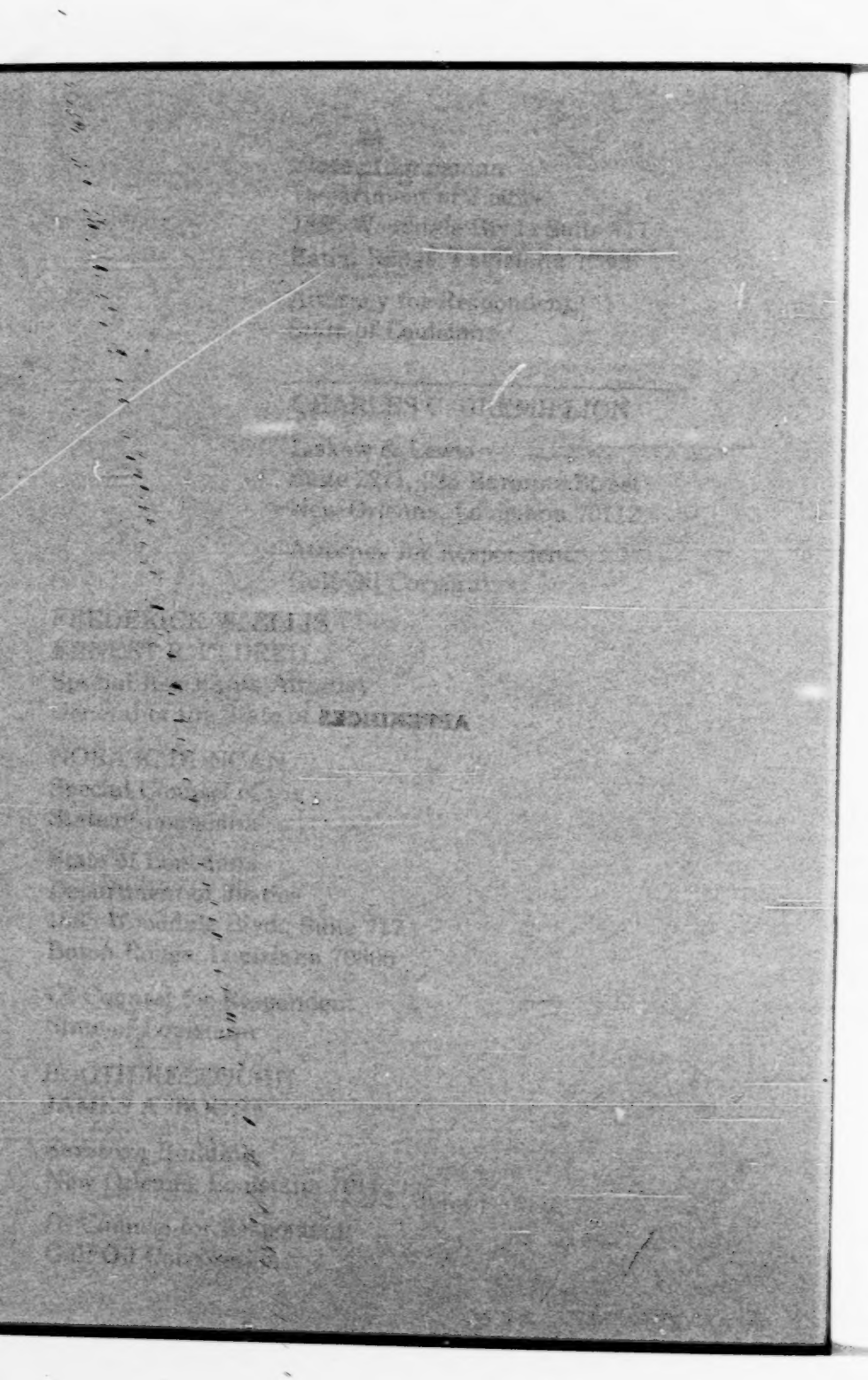

APPENDIX I

SUPREME COURT OF LOUISIANA
Nos. 53,294 and 53,295

STATE OF LOUISIANA, ET AL

versus

PLACID OIL COMPANY, ET AL
(INTERVENTION OF TEXACO, INC.)

ON REHEARING

SANDERS, Chief Justice.

We granted a rehearing in this case because of the importance of the legal issues to the people of the State of Louisiana. Although the bare controversy between the State and defendants is the ownership of a tract of land located below the high-water mark of Grand Lake-Six Mile Lake in St. Mary Parish, the decision has far-reaching consequences, affecting that State's natural resources, ecology, and the public fisc.

For the purposes of rehearing, the facts set forth in the original opinion may be summarized. The State of Louisiana, joined by Gulf Oil Corporation, its lessee, seeks to be declared the owner of an area of land, on which several oil wells are located, lying below the high-water mark of a large body of water known as Grand Lake-Six Mile Lake in St. Mary Parish, adjacent to Sections 49, 50, and 68, Township 15 South, Range 11 East. In 1812, when Loui-

siana was admitted into the Union, Grand Lake-Six Mile Lake was navigable. The areas in dispute are referred to as the Woodland Tract, Barnetts Cove, and The Island area. As found on original hearing, the Woodland tract is part of the bank of the water body. The record discloses that the remaining area was as late as 1935 a part of the bottom of Grand Lake. During the ensuing years, however, sedimentary deposits caused a buildup, transforming the area into alluvion lying below the ordinary high-water mark. A fair inference, we think, is that the sedimentary deposits were accelerated by the channeling and dredging performed by governmental agencies as part of an extensive water-resource program.

Although State-Gulf makes a most persuasive argument that the land formation in the Barnett and Island areas is not alluvion, we accept the findings of the lower courts that it is alluvion, that is, accretions formed successively and imperceptibly on the shore. See LSA-C.C. Art. 509.

As correctly noted in our original opinion, the State of Louisiana upon its admission to the Union acquired title to all lands within its boundaries below the ordinary high-water mark of navigable bodies of water, with the power to determine the rights of riparian owners. Shively v. Bowlby, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331 (1894); State v. Richardson, 140 La. 329, 72 So. 984 (1916).

Through statutory provisions, the State of Louisiana has defined the rights of riparian owners.

As to navigable rivers and streams, the State holds in its sovereign capacity all the land that is covered by water at its ordinary low state. The bank belongs to the owner of the adjacent land, subject to public use. LSA-C.C. Arts. 455, 457; Wemple v. Eastham, 150 La. 247, 90 So. 637 (1922). As to lakes, the State has never ceded, and still holds, the land below the ordinary high-water mark. See LSA-C.C. Art. 455; State v. Aucoin, 206 La. 786, 20 So.2d 136 (1944); State v. Bozeman, 156 La. 635, 101 So. 4 (1924); State v. Capdeville, 146 La. 94, 83 So. 421 (1919); Milne v. Girodeau, 12 La. 324 (1838).

Article 509 of the Louisiana Civil Code, regulating the ownership of alluvion, provides:

> "The accretions, which are formed successively and imperceptibly to any soil situated on the shore of a river or other stream, are called alluvion.
>
> "The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river or stream, and whether the same be navigable or not, who is bound to leave public that portion of the bank which is required by law for the public use."

By its terms, the foregoing article applies only to rivers and other streams. Thus, alluvion formed on the shores of rivers or streams belongs to the adjacent landowners. The principle of accretion, however, is inapplicable to lakes. As to lakes, the adjacent landowners have no alluvial rights. Esso Standard Oil Company v. Jones, 233 La. 915, 98 So.2d 236 (1957); Amerada Petroleum Corporation v.

Case, 210 La. 630, 27 So.2d 431 (1946); Zeller v. Southern Yacht Club, 34 La.Ann. 837 (1882).

The crucial determination is whether at the time of Louisiana's admission to the Union, Grand Lake-Six Mile Lake was a stream or lake. If it was a stream, the banks belong to the riparian owners, and the law of accretion applies. Thus, the disputed land would belong to the adjacent landowners. If, on the other hand, it was a lake, the banks are state-owned and accretion is inapplicable. Thus, the disputed land would belong to the State in its sovereign capacity.

On original hearing, in holding that Grand Lake-Six Mile Lake was a stream, as distinguished from a lake, we stated:

> "[A] body of water through which a current flows or runs with such capacity and velocity and power as to form accretions is characterized as a river or stream, depending upon all attending circumstances, for the purpose of applying the rules of accretion and dereliction set forth in Articles 509 and 510 of the Civil Code."

We now think we erred in holding the body of water to be a stream, primarily because of two basic errors:

> (1) In holding that Amerada Petroleum Corporation v. State Mineral Board, 203 La. 473, 14 So.2d 61 (1943) overruled State v. Erwin, 173 La. 807, 138 So. 84 (1931).

(2) In giving undue weight to the existence of water current capable of forming accretions as a basis of classification.

In State v. Erwin, supra, this Court was concerned with the classification of Calcasieu Lake in Cameron Parish as a lake, river, or stream. That body of water was 18 miles long and varied in width from 4-1/2 to 14 miles. The Calcasieu River traversed the water body from north to south, then continued its flow toward the Gulf of Mexico. At times, there were perceptible currents in the water, and it was affected by tides.

In holding that the water body was a lake rather than a stream on original hearing, this Court stated:

> "In our opinion, however, the better view — with reference to the laws, governing alluvion and dereliction — is to regard such a vast expanse of water as Calcasieu Lake as being in fact a lake, although a river empties into the sea through it." (138 So. at 86)

On rehearing, the Court adhered to the holding that the body of water was a lake.

In Miami Corporation v. State, 186 La. 784, 173 So. 315 (1937), this Court dealt with the stream-lake classification of Grand Lake in Cameron Parish. The Court described it as a "navigable body of running water." It was about ten miles long and from three to nine miles wide. The Mermentau River flowed into and out of the lake. There was sufficient current to carry sediment. The

Court overruled State v. Erwin, supra, as to a point not pertinent here. In holding the body of water to be a lake, however, it reaffirmed the *Erwin* lake classification, stating: "Grand Lake, like Calcasieu Lake, was a navigable lake, when Louisiana was admitted to the Union in 1812." (173 So. at 319).

Amerada Petroleum Corporation v. State Mineral Board, supra, referred to as *First Amerada*, dealt with the Arm of Grand Lake. In describing its characteristics, the Court contrasted it to Grand Lake, the body of water to be classified here, stating:

> "This . . . body of water is, in fact, a stream flowing between banks having all of the characteristics of a wide river, which appears to be only the widening of Bayou Crook Chene. This stream, called the arm of Grand Lake, then in turn connects with Grand Lake at a point where another stream known as Chicot Pass, connecting Chicot Lake with Grand Lake, empties into Grand Lake. The stream known as the arm of Grand Lake has a width between banks of 3,960 feet at its northern point and 4,400 feet at a point opposite Lot 4 of Section 31, Township 11 South, Range 10 East. This width is relatively insignificant as compared to the width of Grand Lake, and this width between banks negatives the idea that it is a lake instead of a widening branch or fork of the Atchafalaya River. Also emptying into the body of water known as the Arm of Grand Lake is a bayou known as Bayou Nimrod, which connects with Bayou Chene through a connection with

another bayou known as Dead Man's Bayou, and Bayou Chene, with which Bayou Nimrod is thus connected, is clearly one of the forks of the Atchafalaya River, and Bayou Nimrod itself is also another fork of the Atchafalaya River." (14 So.2d at 71)

The Court concluded:

"The trial judge held that the arm of Grand Lake is a stream of flowing water and that Article 509 of the Civil Code applies to the alluvion on its banks. Regardless of the characterization of the water as a river or merely as a flowing stream, the conclusion reached by the trial judge is correct." (14 So.2d at 72)

First Amerada makes only one reference to State v. Erwin, supra. That reference is not to overrule, but to distinguish. The Court stated:

"The cases of State v. Erwin, 173 La. 507, 138 So. 84, and Miami Corporation v. State, 186 La. 784, 173 So. 315, also are referred to in their brief by counsel for appellants as authority for the contentions urged by them, but neither of these cases is decisive of the question involved in this case." (14 So.2d at 72)

Our examination of *First Amerada* convinces us that it accomplished no overruling of State v. Erwin. Rather, it considered the characteristics of the particular water body, bearing no resemblance to that involved in *Erwin*, and classified it as a flowing stream or river.

Amerada Petroleum Corporation v. Case, supra, *Second Amerada*, involved part of the identical alluvion dealt with in *First Amerada*. The Court held that the earlier decision controlled.

In 1951, after the *Amerada* decisions, this Court had before it Doiron v. O'Bryan, 218 La. 1069, 51 So.2d 628 (1951), involving Calcasieu Lake, the same water body classified as a lake in State v. Erwin. Although the Court referred to the overruling of State v. Erwin in the Miami Corporation case on the extraneous point, it adhered to the *Erwin* holding as to the lake classification, stating:

> "The case at bar, nonetheless, involves a navigable lake to which these rules of riparian ownership do not apply." (51 So.2d at 632)

The only remaining case cited by the defendants as repugnant to State v. Erwin is Esso Standard Oil Company v. Jones, supra. There, a cut-off was dredged across the neck of a large loop (Deer Park Bend) in the Mississippi River. When the water of the river was diverted into the cut-off, alluvial deposits were made in the loop. The Court held that the alluvion, on the river loop, belonged to the riparian owner. State v. Erwin was not cited in the decision. Because of the physical characteristics of the river loop, no conflict with the prior decision can be noted.

We conclude, contrary to our first impression, that the holding of State v. Erwin as to the classification of lakes has not been overruled.

It is true that sectors of the Court's language in several of the above cases focus strongly upon the existence of accretion-forming current in the water body. When these decisions are read as a whole, however, it is evident that the Court considered, not one, but several characteristics of the water body in making its classification. Our synthesis of these cases yields a conclusion that the existence of accretion-forming current is not, by itself, decisive of a stream classification. As noted in the dissenting opinion on original hearing, a holding that accretion-forming current alone is determinative that the water body is a stream would mean that all alluvion on all water bodies accrues to the riparian owners, contrary to the intent of Article 509, the formal expression of legislative will.

In our opinion, the jurisprudence, as well as the expert testimony, supports a multiple-factor test for classifying a water body as a lake or a stream. A judgment must be based upon a consideration of pertinent characteristics. Among these are the size, especially its width as compared to the streams that enter it; its depth; its banks; its channel; its current, especially as compared to that of streams that enter it; and its historical designation in official documents, especially on official maps. See State v. Erwin, supra; Miami Corporation v. State, supra; Amerada Petroleum Corporation v. State Mineral Board, supra; Esso Standard Oil Company v. Jones, supra; Amerada Corporation v. Case, supra; Zeller v. Southern Yacht Club, supra. State v. Jefferson Island Salt Mining Company, Inc., 183 La. 304, 163 So. 145 (1935); Gulf Refining Company v. Grace, 165 La. 979, 116 So. 405 (1928); State v. Bozeman, 156 La. 635, 101 So. 4 (1924).

Considering these factors in the present case, we find that Grand Lake-Six Mile Lake is one of the five largest water bodies in Louisiana. From earliest times, it has been designated on official maps as a lake. In 1812, at the time Louisiana was admitted to the federal union, the body was also known as Lake Chetimaches or Lake Salé (Salt Lake). It was about 30 miles long by 3 to 10 miles wide. It had a "Thalweg depth of only 8 feet."

The water body was subject to the ebb and flow of the tide. Because of the tidal action, the water was brackish and populated by salt water fish.

The record reflects that Grand Lake is about 20 times wider than the Atchafalaya River, which enters it; that currents are reduced substantially in the lake; that 75% of the sedimentation is deposited in the lake, and only 25% is carried out.

In summary, Grand Lake-Six Mile Lake is a wide, irregularly shaped body of water of great size, relatively shallow in depth, with a current substantially slower than that of the inflowing river. In its main characteristics, it is similar to Lake Pontchartrain and Lake Calcasieu. Historically, it has always been designated as a lake.

We hold that it was a lake in 1812, when Louisiana was admitted to the Union. Accordingly, it must now be classified as such. It follows under the principles already announced that the State owns its banks and that the accretion rule of Louisiana Civil Code Article 509 is inapplicable to it.

The defendants, however, assert on rehearing that the recent decision of the United States Supreme Court in Bonelli Cattle Co. v. Arizona, 414 U.S. 313, 94 S.Ct. 517, 38 L.Ed.2d 526 (1973) requires that the defendants be recognized as the owners of the disputed property, whether the water body be classified as a navigable stream or a lake.

The circumstances that gave rise to the *Bonelli* case are as follows. In 1910, prior to Arizona's admission to the union, the United States government patented the subject land as part of a larger parcel to the Sante Fe Pacific Railroad Company. The parcel abutted the east bank of the Colorado River. Upon Arizona's admission to the Union in 1912, the State acquired title to the bed of the Colorado River. In 1955, the Bonelli Cattle Company acquired title to the subject property. By 1959, however, because of the gradual eastward movement of the river, eroding the east bank and depositing alluvion on the west bank, the subject property was covered by water and became part of the state-owned riverbed. In 1959, a federal Bureau of Reclamation project for the building of Hoover Dam rechanneled the Colorado River, withdrawing it from the subject land.

The Arizona Supreme Court held that the State was not divested of the title to the land and that the State still owned the resurfaced land to a former high-water mark, the ordinary high-water mark as it existed in 1938, before the operation of Hoover Dam reduced the water flow.

The United States Supreme Court held that federal law rather than state law applied. As to the applicable law, the Court stated:

"The present case, however, does not involve a question of the disposition of lands, the title to which is vested in the State as a matter of settled federal law. The very question to be decided is the nature and extent of the title to the bed of a navigable stream held by the State under the equal-footing doctrine and the Submerged Lands Act. In this case, the question of title as between the State and a private landowner necessarily depends on a construction of a 'right asserted under federal law.' "

On the merits, the Court held that the riparian owner regained title by accretion, holding:

"The advance of the Colorado's waters divested the title of the upland owners in favor of the State in order to guarantee full public enjoyment of the watercourse. But, when the water receded from the land, there was no longer a public benefit to be protected; consequently, the State, as sovereign, has no need for title. That the cause of the recession was artificial, or that the rate was perceptible, should be of no effect.

"Nor does the Submerged Lands Act provide a basis for the State's claim to the subject lands. The Arizona Supreme Court incorrectly construed this Act as a grant by Congress to the States of lands '*formerly* beneath navigable waters.' The Act did not abrogate the federal law of accretion, but defined lands beneath navigable waters as being those covered by streams as

> 'hereafter modified by accretion, erosion, and reliction.' Contrary to the implication raised by the Arizona Supreme Court, the Submerged Lands Act creates no new rights for the States in the beds of their inland waterways. The Act is not a grant of title to land by only a quitclaim of federal proprietary rights in the beds of navigable waterways. The Act specifically excepts from its scope lands lawfully conveyed or patented by the United States. Since the Act does not extend to the States any interest beyond those afforded by the equal-footing doctrine, the State can no more base its claim to lands unnecessary to a navigational purpose on the Submerged Lands Act than on that doctrine." (414 U.S. at 323, 94 S.Ct. at 525, 38 L.Ed.2d at 537-538)

As we view it, the *Bonelli* decision is inapplicable to the present case. The area in dispute there, once privately owned, was no longer part of the river bed. The Court found it to have a location above the *present* high-water mark.[1] The instant case involves a bank area and alluvion below the present ordinary high-water mark of the lake. Unlike the land in *Bonelli*, the title to the disputed area here is vested in the State "as a matter of settled federal law." See Arkansas v. Tennessee, 246 U.S.158, 38 S.Ct. 301, 62 L.Ed. 1213 (1917); Shively v. Bowlby, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331 (1894); Hardin v. Jordan, 140 U.S. 371, 11 S.Ct. 808, 35 L.Ed. 428 (1891).

---

1 In a supplemental brief, defendants contend from maps appearing in the State court decisions that the disputed area was located below the high-water mark. The maps are unclear on this point. In any event, the United States Supreme Court adjudicated on the basis that "the State of Arizona will continue to hold title to the bed . . . to its present high-water mark." (38 L.Ed.2d at 536-537)

It follows that in the present case state law governs the rights of riparian owners. Bonelli Cattle Co. v. Arizona, supra; Arkansas v. Tennessee, supra; Shively v. Bowlby, supra.

In Bonelli Cattle Co. v. Arizona, supra, the United States Supreme Court reaffirmed the state-law principle, stating:

> "We continue to adhere to the principle that it is left to the States to determine the rights of riparian owners in the beds of navigable streams which, under federal law, belong to the State." (414 U.S. at 319, 94 S.Ct. at 523, 38 L.Ed.2d at 535)

Finally, we recognize that our present holding is contrary to the decision of the intermediate Court of Appeal in State v. Cockrell, 162 So.2d 361, cert.den. 246 La. 343, 164 So.2d 350 (1964). That decision, of course, has already been weakened by the recorded opinion of its author that the decision is in error. See State v. Placid Oil Company, La. App., 274 So.2d 402, 422 (dissenting opinion). We reject that decision as unsound.

As was noted on original hearing, the defendants filed several exceptions. They were overruled by the trial court, and the Court of Appeal affirmed. We find no error in these rulings for the reasons assigned below.

Consistent with the views expressed, we hold that the State of Louisiana owns the disputed areas, located below the ordinary high-water mark of Grand Lake-Six Mile Lake, subject to the rights of its mineral lessee, Gulf Oil Corporation.

For the reasons assigned, the judgment of the Court of Appeal, insofar as it decreed the defendants to be the owners of the area hereinafter described, is reversed. Judgment is rendered in favor of plaintiffs, State of Louisiana and Gulf Oil Corporation, against Placid Oil Company, J. Ray McDermott & Co., Inc., and all other defendants decreeing the State of Louisiana to be the owner of the property covered by State Lease 2963, dated April 18, 1956, to Gulf Oil Corporation, being more particularly described as follows:

> Commencing at a point on the present shore line of Six Mile Lake at its intersection with the boundary line between Sections 66 and 67, Township 15 South, Range 11 East, which point is also the Southwest corner of State Lease No. 2940, thence (for the Eastern boundary of the area herein described) running North 4700 feet to the South boundary line of State Lease No. 1392, thence West 9900 feet along the South line of said State Lease No. 1392 to a point for a corner; thence South to the original South shore line of Six Mile Lake, and thence in an Easterly, Southeasterly and Northeasterly direction following the meanders of the original South shore line of said Six Mile Lake to the Eastern boundary of the area herein described; being all of the area between the East and West boundaries thereof hereinabove set forth and extending from the North boundary thereof South to the original shore line of Six Mile Lake, said original shore line herein referred to being as shown on plat on file in State Land Office and attached to State Lease 2963 to Gulf Oil Corporation, dated April

18, 1956, duly recorded in the Conveyance Records of St. Mary Parish, Louisiana.

It is further ordered, adjudged, and decreed that the Placid Oil Company and J. Ray McDermott & Co., Inc., in solido, make an accounting to the plaintiffs for the oil, gas, and other minerals removed from said land, including the oil produced by the wells located on said property designated as S. G. Todd Wells 3, 4 and 5. For the purpose of the accounting, the case is remanded to the Sixteenth Judicial District Court for the Parish of St. Mary for further proceedings consistent with the views herein expressed.

The fees of the following expert witnesses are fixed in the following sums and taxed as costs:

Dr. John P. McDowell	$2,800.00
Dr. Willis A. Eggler	2,300.00
Dr. R. Kazmann	350.00
Prof. R. A. Steinmayer	3,700.00
William Clifford Smith of the firm of T. Baker Smith & Son, Inc., Civil Engineers and Surveyors	9,000.00
Philip Whitaker of the firm of F. Shutts' Sons, Civil Engineers	12,500.00
Louis C. Peters of the firm of Barnett & Peters, Consulting Foresters	2,700.00

The fees of other expert witnesses are affirmed as fixed in the lower court.

All costs of court are assessed against the defendants, Placid Oil Corporation and J. Ray McDermott & Company, Inc., in solido.

APPENDIX II

(Exhibit P-6 and Exhibit D-91)

A portion of a map of the State of Louisiana by William Darby.

FOLD OUT IS TOO LARGE TO BE FILMED

CERTIFICATE OF SERVICE

I certify that three copies of this Opposition were served this —— day of December, 1974 on each counsel of record in this Court for each other party separately represented. Such service was made by mail depositing the same in a United States Post Office with first class postage prepaid addressed to the counsel of record at their respective post office addresses.